

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Competitive Market Issues)
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COMMENTS OF COMPETITIVE SUPPLIERS

I. INTRODUCTION

AES New Energy, Inc., AllEnergy Gas and Electric Marketing Company, L.L.C, Enron Energy Services, Exelon Energy Company, Green Mountain Energy Company, The National Energy Marketers Association, and SmartEnergy, Inc. (the “Competitive Suppliers”) are pleased to offer the following comments regarding competitive market issues.

The Competitive Suppliers commend the Department of Telecommunications and Energy (the “Department”) for undertaking this initiative. We share the Department’s views that reforms are needed in order to create a viable retail market in Massachusetts that will provide savings and choices to customers. We look forward to working with the Department, appropriate state agencies, including the Division of Energy Resources, utilities, customer groups, and other interested parties to identify and implement those necessary reforms.

Our comments are organized as follows: First, we address the proposals made by Massachusetts Electric and NStar. Then, we recommend a series of reforms that the Department could implement immediately and that would help to improve the market for this summer. Then, we recommend a series of longer-term reforms that the Department

should examine over the next several months and implement in January 2002. Finally, we discuss the Standard Offer, which is an additional and very substantial barrier to the development of a competitive retail market in Massachusetts.

II. THE UTILITY PROPOSALS

A. The Massachusetts Electric Proposal

The Competitive Suppliers would also like to commend Massachusetts Electric for its efforts in meeting with suppliers and attempting to identify steps that would help those suppliers market to and serve Default Service customers. On May 22, 2001, Massachusetts Electric filed a proposed Default Service Initiative. The initiative consists of two components: 1) customer lists; and 2) a short list of qualified suppliers.

1. Default Service Customer Lists

This element of the proposal consists of making lists of non-residential default service customers available to suppliers by rate class.

The Competitive Suppliers support this proposal. However, we would like to see it extended to residential customers as well as non-residential customers. As the Department is well aware, it is the residential market that has the greatest need for the reforms that the Department is considering. Indeed, residential customers currently have no true competitive options. Providing lists of default service customers, while not sufficient on its own, is a fundamental first step in creating a market for these customers.

At the technical session, there was discussion regarding whether a customer's status as a default service customer is confidential, and thus something that should not be released without the customer's permission. The Competitive Suppliers could find no statutory provision establishing a privacy right in a customer's default service status.

Moreover, there is no reasonable expectation of privacy in that status and no harm that would come to the customer from its disclosure. Knowledge of a customer's default service status indicates nothing about the customer's credit history or any other "private" information.

For residential customers, the Competitive Suppliers recommend that the Default Service customer lists include only customers whose accounts are current. Including such information will increase the likelihood that suppliers will market to all customers on the lists, without revealing negative credit history about any customers.

These lists should be updated and reissued every 60 to 90 days.

2. *Short-list of suppliers*

MassElectric has proposed creating a short list of qualified suppliers, and then assisting those suppliers in contacting MassElectric customers using the company's existing communication channels, including bill stuffers, web site, etc. There would be a separate list for each rate class.

The Competitive Suppliers generally support the concept. However, the "short list" should be open to all suppliers that meet basic objective criteria for doing business in the Massachusetts Electric service territory. Massachusetts Electric should not exclude suppliers from the list using subjective criteria. The lists should include all suppliers that:

- a. Are registered in Massachusetts. It is not appropriate to impose additional requirements regarding financial viability and customer service capability.
- b. Are compliant with existing requirements for doing business in the utility's service territory, e.g. EDI compliant.
- c. Are generally willing to make offers to customers in the rate class to which the list is distributed. Suppliers cannot be required, as MassElectric suggests, "to respond with offers to any and all customers approaching them in response to marketing this initiative." Suppliers must be able to

decide whether to make an offer to a particular customer based on the suppliers' legitimate business criteria, e.g., customer creditworthiness.

- d. Request inclusion on the list.

B. The NStar Proposal

NStar has proposed a program named "Matchmaker," which involves providing suppliers with a coded list of the 200 largest default service customers without revealing the names of those customers.

The NStar proposal, although quite different from that of MassElectric, offers some commendable features. The list would include only customers that are in good payment standing with the utility, and would provide the customers' historical hourly load data. Both features are quite useful from a prospective supplier's standpoint. Also, Nstar's willingness to utilize its account representatives to facilitate the process shows a genuine interest in making the effort a success and in encouraging its larger default service customers to seriously consider competitive options.

However, although well intended, the Matchmaker proposal will not accomplish the Department's goal. Because Matchmaker does not provide the customer name or contact person, it does not afford suppliers the ability to contact customers directly. Instead, it relies on the utility to contact customers, and then requires customers to take the initiative to contact interested suppliers. Our experience has proven that use of this type of intermediary is not effective for either the customer or the supplier. The program puts the utility between the supplier and the customer. Suppliers and customers would both be better served by providing the customer names and contact information to suppliers, and letting suppliers market to customers directly. The ability to initiate contact

directly is essential for suppliers, and thus a customer contact list is one of the most useful steps that can be taken to stimulate the competitive market.

As currently crafted, Matchmaker requires, or at the least encourages, suppliers to provide indicative offers that NStar can convey to specific customers. This approach is virtually impossible with regard to the larger customers, which is exactly the group that “Matchmaker” is targeted to. Contracts between suppliers and large sophisticated customers involve a great deal of interaction and are frequently tailored to specific customer business needs. There is not a “cookie cutter” approach for the largest customers.

Moreover, putting NStar in the position of conveying the suppliers’ offers to customers creates a risk that NStar will be perceived as endorsing certain offers over others. This could mislead customers and place the utility in an inappropriate role between the supplier and the customer. In the end, no one can properly represent a product as well as the provider of that product.

III. IMMEDIATE STEPS

There are a number of steps that the Department could take immediately that would improve the competitive market in time for this summer. These steps include the following.

A. Customer Lists

As discussed in more detail in our comments on the Massachusetts Electric proposal, all utilities should make lists of default service customers available to competitive suppliers. Separate lists should be divided by, and made available for, all rate classes, including residential, and should include contact information. The lists

should also indicate whether customers have primary or secondary voltage. The lists should be updated every 60-90 days. The residential list should include only customers whose accounts are current on the utility charges.

B. Short List of Suppliers

As discussed in more detail in our comments on the Massachusetts Electric proposal, utilities should create short lists of suppliers that meet the basic objective criteria for doing business in the service territory and are generally willing to make offers to customers. The lists should indicate what rate classes the suppliers are serving. The utilities should help these suppliers to communicate with default service customers using the utilities' existing communication channels, including bill stuffers, the utility web site, and utility customer service and account representatives.

C. Electronic Signatures and Recorded Telephonic Authorization for Customer Enrollment and Release of Usage Data

The Department should allow the use of electronic signatures and recorded telephone calls for customer authorization of enrollment and authorization of release of usage data.

Currently, the Department requires a "wet signature" for authorization of release of usage data, and requires either wet signature or third-party verified telephone for enrollment. These requirements force suppliers to engage in expensive and inefficient business practices. They create barriers and costs both in the customer sign-up process and when accessing customer data from the utility, critical early steps in the development of a mutually beneficial supplier-customer relationship. They also create barriers for

customers, who are prevented from providing their authorization electronically despite their wish to do so.

Electronic signatures and telephonic authorizations of sales and the release of usage data present additional opportunities for stimulating the marketplace. Submitted over the Internet, electronic signatures have become a standard and secure means of authorizing a wide variety of transactions. Similarly, recorded and date-stamped telephonic authorizations are an effective and common method of allowing consumers and businesses to engage in transactions. With electronic signatures, both parties to a transaction can maintain complete records, including commitments made and accepted by the parties. Likewise, recordings of telephonic authorizations serve as verification of a sale or grant of permission. With these two methods, sales can be transacted more efficiently, free of the “wet-signature-on-paper” impediment. Electronic signatures and recorded and date stamped telephonic authorizations are commonly accepted both in other restructured electric markets and throughout the economy.

Indeed, the Federal Electronic Signatures Act requires states to give electronic signatures the full force and effect of handwritten signatures. The Act does allow states to adopt their own rules for the acceptance of electronic signatures, but only insofar as they are not “inconsistent with” the Act. Accordingly, the Department should clarify that, as required by federal law, the existing statutory and regulatory requirements for a “signature” are satisfied by an electronic signature.

D. Public Education

The Department, in collaboration with the Division of Energy Resources (DOER) and other relevant state agencies, should initiate efforts to educate customers about the

competitive electricity market and customers' opportunities for choice. The Department and DOER had similar programs immediately following the passage of the Restructuring Act. Given the length of time that has passed and the series of developments that have occurred since that initial education effort, another education program is warranted. The change of Default Service to a market-based rate has already resulted in increased market activity, and customers would benefit from an educational campaign as they face important choices in the market.

This outreach effort could include tactics such as communicating through the local distribution companies with bill stuffers, mailings, and seminars for large customers. In addition, if there are sufficient state resources, a public service campaign on television, radio and in newspapers could be effective.

Positive messages about choice and the competitive market would assist in increasing the awareness, interest, and understanding of customers. In addition, positive messages could help to balance negative messages customers receive concerning electricity competition. The Department and DOER are in a unique position to contribute to this. Competitive Suppliers offer assistance in designing materials and messages, attending public seminars, and other related activities.

E. Utility Staff Needs

The timely processing of customers' authorization requests is a critical element of the customer enrollment process. To ensure that retail customers are able to receive price quotes from suppliers, it is important that distribution companies have the capacity to process authorization requests in a timely manner. The Department should require that electric companies have sufficient personnel to process these requests within a few days.

F. Update Data Requests Regularly

The Competitive Suppliers request that the Department encourage local distribution companies to regularly (i.e. on a quarterly basis) update data from customers that have submitted authorization forms. Having recent and accurate data facilitates suppliers' efforts to make pricing offers to potential customers.

G. Include Voltage Information With Customer Data

When a supplier submits an authorization form from a commercial or industrial customer to a distribution company, the supplier should receive, along with data on the customer's usage patterns, information indicating whether the customer has primary or secondary voltage.

H. Department Web Site

The Department's web site is a valuable tool. It is a source of extensive information that is a benefit to consumers and various industry stakeholders. The Suppliers believe that the web site could become even more valuable by asking all competitive suppliers and aggregators listed on the web site to indicate their interest in two issues: 1) Are they currently active in the Massachusetts market? 2) What rate classes are they interested in serving? The Suppliers recommend this change to the Department's web site because it will make the site even more user friendly and it will encourage consumers to contact suppliers that are active in their respective markets.

I. Customer payment history

Suppliers assume credit and collection risks when signing up customers. Without sufficient background information on prospective customers, suppliers have difficulty measuring these credit and collection risks.

It would be inappropriate to release customer payment history without customer authorization. However, suppliers should be able to obtain that information if the customer authorizes it. The process should be electronic – both the customer authorization and the data provided by the utility to the supplier.

With customers' payment histories, suppliers are more likely to participate in the Massachusetts market because they can measure credit and collection risks and make informed offers to customers. In New York, Con Edison releases information indicating whether its customers are behind in payments owed to the utility. Massachusetts' utilities should release similar information.

IV. LONGER-TERM APPROACHES

Some of the measures that will be necessary to animate the retail market will take more time to develop than the immediate steps described above. The Department should work with the parties over the next six months to fully develop these measures and plan to implement them January 1, 2002. These longer-term measures include the following.

A. Pricing of Default Service

During the Department's technical session on May 31, 2001, the question of whether default service is appropriately priced was raised.¹ Suppliers continue to believe that a number of important costs have been left out of the default service formula. While the Department correctly included most commodity costs, it dismissed administrative and customer service costs as insignificant. Suppliers are not convinced that the costs were

¹ One of the signatories to these comments, National Energy Marketers Association ("NEM"), has provided additional details on its position with respect to default pricing in NEM's "National Guidelines for Designing and Pricing Default Energy and Related Services," available at www.energymarketers.com/Documents/FinalDefaultPaper.pdf.

adequately analyzed. If the utilities applied overhead-loaded embedded costs, the level of costs would most certainly be significant. Suppliers continue to believe that inclusion of these costs is necessary if default service is ever intended to simply be a way-station for customers who are between suppliers.

It is not the intent of Suppliers to inflate the cost of the entire bill to consumers by adding these costs to default service. Rather, what we have proposed in the past and continue to propose is a reallocation of costs from the distribution portion of the bill to default service.

The second argument against adding these costs was that it would be administratively burdensome for the utilities to calculate a reconciliation each year. The Suppliers point out that the gas utilities manage to accomplish this each year, and have not been harmed by the allocation of procurement costs, production and storage costs, bad debt, working capital, interest and taxes in the gas adjustment.

The specific costs that Suppliers believe were missed in D.T.E. 99-60 include all costs associated with activities performed by the Distribution Companies that are included in the distribution portion of the bill on an embedded basis. These costs include the following:

a) Commodity Procurement Costs

Distribution Companies incur certain expenses associated with procuring a wholesale default service supply. The labor costs of the staff required to issue RFPs, evaluate bids and negotiate and execute contracts, along with their associated working capital and general and administrative costs should all be part of the default service price.

b) Credit, Collection, and Bad debt

Default service is missing all costs associated with credit, collections and bad debts. To exclude these costs implies that there are no such costs for default service, when in fact utilities expend a great deal of effort and cost to collect all monies owed them, including default service. A certain portion of bad debt charge offs is also related to default service. These costs should be included on an embedded basis in the default service rate.

c) Customer Service

Utilities respond to many calls associated with default service. As such, customer service costs should be included in default service.

d) G&A

Utilities have general and administrative overhead costs to support default service. Certainly any labor costs mentioned above have associated pension and benefit costs as well as payroll processing costs, payroll taxes costs, information systems costs, the cost of office supplies, rent for the space associated with the labor costs, etc. A portion of these costs is appropriate to add to default service.

It is important to clarify misconceptions that some parties have that suppliers appear to advocate indiscriminate increases in rates. Although we are advocating an increase in default service prices to cover the aforementioned costs, there should be an associated reduction in distribution charges so there is no difference in the customers overall bill.

Some have suggested that a commodity only Default Service price is adequate because suppliers have advantages over the utility when it comes to purchasing the

commodity, and so should be able to get a lower price. It is true that suppliers have certain advantages over the utility when it comes to purchasing commodity. These include: 1) A flexible procurement process, as compared to the rigid every 6-month process the utilities are required to use; and 2) the ability to reduce volume risk (and the associated cost) by locking customers in to long-term contracts.

However, at best these advantages enable suppliers to cover the costs they incur that the utility does not, e.g., customer acquisition costs. They do not enable suppliers to cover costs that the utility is recovering in distribution rates.

Moreover, the primary supplier advantage, the ability to minimize volume risk, is not available to residential suppliers. Most residential suppliers have found that residential customers are very reluctant to enter into the long-term contracts that are needed to reduce the suppliers' volume risk.

B. Moving the Utility Out of the Default Supplier Role -- Allocation of Customers to Competitive Suppliers

The ultimate barrier to the creation of a competitive retail market is the utility role as the default provider. Other steps to animate the competitive market may ultimately fail as long as customers remain utility customers by doing nothing.

Other states, such as Pennsylvania and Texas, have recognized this and have taken affirmative steps to move customers to competitive supply. This can be done on an opt-out basis, whereby the customer can affirmatively choose to stay on utility service but the failure to choose results in the customer going to competitive supply.

This is a step that must be taken with great care. However, it is one that the Department should take if it hopes to succeed in its effort to animate the retail market.

C. Enhanced Customer Lists

The previous section addressing “short-term approaches” for immediate implementation discusses lists of default service customers. So that these lists can be made available to suppliers immediately, they should only include the type of customer information, such as name and contact information, that can be made available without customer authorization.

As a longer-term measure, however, the Department should develop procedures to enable suppliers to obtain an enhanced customer list. The enhanced list would include additional information, which would be very useful for suppliers but might require some form of customer authorization to be released.

Pennsylvania has made customer information available to suppliers by mailing customers cards that authorize the dissemination of such information. New Jersey will soon follow. Massachusetts should do the same.

Authorization cards can be structured with either an “opt in” or an “opt out” check-off. The “opt out” check-off allows the customer to prevent utilities from sharing customer data, but requires the customer to affirmatively check a box to do so. The “opt in” format allows the customer to permit the distribution company to share information, but only if the customer affirmatively checks a box. The “opt in” format would be more appropriate as a means of permitting suppliers to access the most sensitive types of data.

D. Performance Based Ratemaking

In D.T.E.99-84 Investigation by the DTE to Establish Guidelines For Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, the Department established performance categories in the areas of Customer Service and Billing, Customer Satisfaction, Safety and Electric Company Reliability.

The Competitive Suppliers believe the Department should add an additional service quality category – Competitive Market Success. Suppliers are captive customers of the utility with respect to each utility's service territory. Success or failure of a utility's program can depend on how well the utility performs its competitive market tasks. Utilities are in the unique position of being able to facilitate the success of a program, or to simply go through the motions and leave service to suppliers at the bottom of their list of priorities. Utilities may also become more innovative with respect to helping make a competitive market work if they have a positive incentive to do so.

Under the competitive market success category, the suppliers would include the following metrics:

- Customer migration to competitive suppliers – measured by the percentage of customers who have switched to competitive supply.
- Timeliness and accuracy of metering and billing data – measured by average number of days between the meter read and data transmission and number and frequency of billing adjustments experienced by customers who are being served by a competitive supplier.
- Timeliness of processing enrollments – measured by the number of customers who are not switched at the time of their next cycle read after a timely request.
- Marketer service satisfaction – measured by the speed of response to marketer phone calls, requests and inquiries. Additionally measured by the number of marketer complaints fielded by the Department. The Department could establish a hot line to field supplier calls.

These types of competitive market success measures would give the utility a stake in the success of the market. It should give utilities added incentives to do all they can to help the market succeed. The Department should reconsider its decision to exclude these types of incentives from the service quality standards by which utilities are measured.

E. Payment Order

Payment Order regulations disadvantage suppliers vis-à-vis default and standard offer service. If the utility bills supplier services in a single consolidate bill to the customer, the customer can remit a partial payment that does not cover supplier charges and not be at risk for shut-off. If the customer fails to pay the full amount for default or standard offer service, the customer is at risk for shut off. This creates an uneven playing field for the supplier, and creates one more barrier for suppliers who may want to enter the market. Suppliers believe that payment order should be changed to reflect more equitable application of payments between supplier balances and distribution company balances. Suppliers will present more extensive comments in DTE 01-98.

F. Supplier Consolidated Billing

The failure to allow supplier consolidated billing creates another barrier to the development of a competitive retail market. The bill creates an opportunity for suppliers to communicate with their customers. However, this opportunity is not available in Massachusetts unless the supplier chooses the dual bill option, which by and large customers dislike. Many other retail access states offer a combined supplier bill option; Massachusetts should as well. The Competitive Suppliers will present more extensive comments on this issue in D.T.E. 01-98.

G. Internet-Based Data Exchange

The electricity marketplace requires an efficient and cost-effective exchange of electronic data.² Competitive suppliers rely on the exchange of electronic information

² One of the signatories to these comments, National Energy Marketers Association ("NEM"), has provided additional details on its position with respect to Internet-based data exchange in NEM's "National Energy

with utilities in order to receive vital usage data, enroll customers, and unenroll customers. An internet-based infrastructure for exchanging data is less expensive, less complicated, and speedier than the VAN data exchange system that utilities currently rely on. Pennsylvania and Illinois, which have adopted an Internet-based exchange of data, have demonstrated its benefits. Additionally detailed standards for design, testing and implementation are available. These standards have been reviewed by Commissions, in other jurisdictions, and are currently in use by several market participants.

The exchange of data frequently requires numerous transactions for numerous accounts. With the VAN system, utilities charge suppliers for each transaction. In addition, the utility incurs base costs for maintaining VAN mailboxes. Internet based exchange of data does not have per transaction costs, and is therefore more cost-effective. In addition, Internet technology is significantly more user friendly than VAN technology. The skill-level required for managing a VAN based data exchange is greater than the level of skill required for Internet-based exchanges. Likewise, the simpler Internet-based exchange takes less time to execute. Mandating the use of Internet-based data exchange systems would make market entry easier and more cost-effective for suppliers, provide savings for utilities, and insure a data exchange process that is more efficient for all parties.

V. ADDITIONAL BARRIER TO THE DEVELOPMENT OF A COMPETITIVE RETAIL MARKET IN MASSACHUSETTS

The measures described above are especially important because of the very large barrier to the development of the competitive market that was not mentioned at that technical session – the Standard Offer.

Technology Policy" available at

As the Department is well aware, the Standard Offer is a major impediment to the development of the competitive retail market. Standard Offer prices are well below market prices.

The effect of Standard Offer is to take 75% of Massachusetts customers “off the table” as far as competitive suppliers are concerned. This greatly reduces the effectiveness of mass marketing efforts. It also makes Massachusetts much less attractive to suppliers, effectively transforming it from a state with 2.4 million potential customers to a state with just 550,000 potential customers.

The Standard Offer problem will not be solved in this proceeding. However, the existence of that problem means that we must be much more aggressive with other measures if we truly want to animate the retail market.

VI. CONCLUSION

The Competitive Suppliers respectfully request that the Department implement the initiatives described above to animate the competitive market.

Respectfully submitted,

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